

**BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D.C.**

In the matter of

**OPERATING LIMITS AT CHICAGO
O'HARE INTERNATIONAL AIRPORT**

Docket No. FAA-2004-16944

COMMENTS OF THE AIR CARRIER ASSOCIATION OF AMERICA

Comments with respect to this document should be addressed to:

Edward P. Faberman
Executive Director
Air Carrier Association of America
1500 K Street, N.W., Suite 250
Washington, D.C. 20005-1714
202-639-7502
202-639-7505
epfaberman@acaa1.com

August 13, 2004

**BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D.C.**

In the matter of

**OPERATING LIMITS AT CHICAGO
O'HARE INTERNATIONAL AIRPORT**

Docket No. FAA-2004-16944

COMMENTS OF THE AIR CARRIER ASSOCIATION OF AMERICA

The Air Carrier Association of America¹ ("ACAA") submits these comments in response to the Federal Aviation Administration ("FAA") Notice Concerning Operating Limits at Chicago O'Hare International Airport ("O'Hare").

I. Introduction

On July 28, 2004, the Federal Aviation Administration ("FAA") issued a notice announcing that air carriers would be asked to attend a meeting² to discuss flight reductions at O'Hare to reduce overscheduling and flight delays during peak hours of operation at that airport caused by significant increases in the number of flights. In calling for the meeting, the FAA stated that 49 U.S.C. § 41722 authorizes the Secretary of Transportation, Department of Transportation ("Department") to request air carriers to attend a meeting with the FAA

¹ ACAA's members include Airtran Airways, Frontier Airlines and Spirit Airlines.

² On January 8, 2004, following several months in which delays at O'Hare and emanating from the airport through the national airspace system had reached unacceptable levels, the FAA Administrator determined that a meeting to address congestion at O'Hare was necessary. On January 16, 2004, the Secretary then made a similar determination that a meeting was needed to meet a serious transportation need.

Administrator to discuss flight schedule reductions at any severely congested airport during peak operating hours.

In the notice, the FAA noted that it had previously obtained the agreement of United Airlines and American Airlines to reduce their scheduled operations at O'Hare. The Orders issued by the Department, after discussions with United and American limiting scheduled operations during certain hours at O'Hare by those carriers, will expire on October 30, 2004. In explaining the need for a meeting, the FAA added that the statistics for air traffic at O'Hare continue to show overscheduling and excessive delays. Daily scheduled operations published for August remain approximately 170 flights above the daily August 2003 scheduled flights.

On July 28, 2004, Secretary Mineta said, "O'Hare's on-time performance is unacceptable and has a substantial ripple effect on our nation's aviation system. It is critical that all O'Hare carriers set schedules that better match the airport's current capacity and keep passengers moving."

The FAA held the scheduling reduction meeting on August 4, 2004.

II. Delay-Free Operations are Critical to the Continued Growth of the Nation's Air Transportation System.

The actions taken by the Department and FAA to address congestion and delay issues at O'Hare are very important. At a time that the American public is increasing air travel plans, it is essential that all steps be taken to encourage those travelers to continue to plan and take family and business trips. Unfortunately, stories about lengthy flight delays discourage passengers from flying. Therefore, eliminating the likelihood of O'Hare delays is essential if the system is going to operate smoothly and continue to see important growth.

Having said that, however, steps taken to reduce O'Hare delays or congestion issues at any airport must not reduce competition or customer choice. This is particularly the case at O'Hare where there are a limited number of carriers offering low-fare travel options. It is important to the system and Chicago area residents and visitors that those offering low-fare service can expand at O'Hare.

Secretary Mineta has emphasized that as a result of the expansion of competition, Americans are returning to the skies. In a speech in March, Secretary Mineta stated, "A healthy transportation sector is essential to President Bush's efforts to keep America on track for a more prosperous future...Transportation has never been more important to America's economic future than it is right now." (Commercial Club of Chicago, March 10, 2004)

While steps must be taken to ensure that operations at O'Hare do not impact travelers and create significant delays, FAA must take appropriate actions that also meet Secretary Mineta's call for expanded low-fare travel opportunities and continued economic growth³.

III. FAA Must Continue to Provide for Entry and Expansion.

On November 9, 1969, as a response to air traffic delays, the FAA established the high density rule. When the rule was promulgated, the FAA stated, "the rule should be considered to

³ The Deregulation Act emphasized the importance of entry into all airports, including O'Hare. Competition and new entry are the backbones of the airline deregulation. In order for deregulation to continue, we must adhere to the following:

(10) Avoiding unreasonable industry concentration, excessive market domination, monopoly powers...

(11) Encouraging entry into air transportation markets by new and existing air carriers and the continued strengthening of small air carriers to ensure a more effective and competitive airline industry. (49 U.S.C. §40101)

be only a temporary solution." The thought was that the rule would only be in place for a short period of time since capacity would be increased. In 1968, the FAA⁴ noted:

Delays of varying magnitude are encountered at many terminal areas Congestion at these terminals frequently requires the imposition of traffic flow restrictions creating backup delays throughout the air transportation system.

A reduction in air traffic delays can be accomplished only by increasing the capacity of the system or decreasing the demands placed upon it. Certain changes in air traffic and airport procedures and practices are already planned by the FAA to increase aircraft handling capacity.

Despite the establishment of the high density rule, delays did not disappear. Unfortunately, thirty-five years later the high density rule remains in place at Ronald Reagan Washington National Airport ("National") and LaGuardia Airport ("LaGuardia"), and may need to be reinstated at O'Hare.

This is not the first time that FAA has held "scheduling meetings." As a result of significant delays in 1984 and 1987, the FAA held scheduling meetings to address delays/congestion:

There can be little doubt that our nation's air transportation system is currently facing a substantial delay problem. According to DOT, airlines and travelers suffered 39,000 delays of more than 15 minutes in July of this year alone...We tentatively concluded, however, that airline scheduling practices were a significant source of delays, since airlines appeared to be scheduling more flights at peak periods at major airports than could be accommodated by the available taxiways, runways, and airspace... [Docket 42410, "Application For Discussion Authority And Prior Board Approval Of Carrier Agreements To Integrate Schedules," Order 84-8-129, "Order Granting Discussion Authority," August 31, 1984]

We find that the discussions are necessary to help alleviate the serious inconveniences caused the traveling public by the worsening delay problem, and that the discussions should therefore be approved and granted antitrust immunity. [Docket 44634, "Discussion Authority For Carrier Agreements to Shift

⁴ Notice of Proposed Rule Making and Notice of Public Hearing; 33 FR 12580, September 5, 1968

Schedules,” Order 87-3-39, “Final Order Granting Discussion Authority,” March 11, 1987]

While those meetings helped address the crisis facing the air space system, the high density rule remained in place. With this background, there is great concern that restrictions created to solve the current O’Hare delay problems will permanently restrict competition. As has happened in the past, new "temporary solutions" proposed to address short term airspace and airport congestion may again become permanent restrictions. Since the high density rule was implemented, there has been limited entry and competition at high density airports.

While it is important to address increased congestion and delays, the solution must not impact competition, new entry and the growth of small carriers if steps are again taken to limit capacity and congestion. When the Department announced the scheduling meetings in 1984, it emphasized that it was essential for competition to be protected:

As we stated in the show-cause order, we do not wish to impose capacity limits on carriers, and we do not intend that the discussions lead to a **significant reduction in competition or in the carriers’ ability to respond to market forces**. [Docket 42410, “Application For Discussion Authority And Prior Board Approval Of Carrier Agreements To Integrate Schedules,” Order 84-8-129, “Order Granting Discussion Authority,” August 31, 1984]

[Docket 42410, “Application For Discussion Authority And Prior Board Approval Of Carrier Agreements To Integrate Schedules,” Order 84-8-129, “Order Granting Discussion Authority,” August 31, 1984]

The Department should again ensure that the doors to competition are not closed as it addresses overscheduling by the two dominant O’Hare carriers and their partners.

IV. O’Hare Congestion Problems Have Been Caused by United and American.

The significant expansion in operations at O'Hare and in Chicago area airspace has been caused by large increases in operations by United Airlines and American Airlines and the increase in regional jet utilization by both of those carriers⁵. United and American dominate O'Hare controlling approximately 88% of all operations.

The increase in O'Hare delays and congestion during the past several months was addressed in the Department of Transportation Inspector General's ("IG") Report, "Airline Industry Metrics, Trends on Demand and Capacity," dated January 8, 2004. The report stated that FAA officials acknowledged that "concern with the airspace" is related to United and American adding large numbers of flights and the growth in regional jets:

Delays at some Airports are increasing. Although systemwide delays and cancellations of the first 10 months of 2003 are less than one-half the number of delays for the same period in 2000, some airports are beginning to experience increases over the past years. For example, Chicago O'Hare reported 44,230 arrival delays during the first 11 months of 2003, a 3-percent increase over the 43,130 reported during the same period in 2002. In some months, however, the number of delays was significantly greater. **According to FAA, the problems at O'Hare stem from aggressive scheduling by the airlines as American has shifted many of its prior St. Louis connections to Chicago and United has responded competitively by scheduling head-to-head operations. FAA also attributes United's use of regional jets to match American's schedule with further reductions in airport capacity, as regional jets require greater separation times between operations than do larger jets.**

The report also states:

Another significant development involves the phenomenal growth in RJ flights. Scheduled flights involving RJs increased 140% between December 2000 and December 2003.

⁵ While other carriers may have added operations at O'Hare, those increases have been a small percentage of the increase by United and American.

Those airports with the highest percentages of RJ flights as of December 2003 are: Cincinnati (72%), Dulles (44%), **Chicago O'Hare (41%)**, Newark (38%), LaGuardia (30%) and Reagan National (29%).

While United and American took a few steps to reduce some of the operations they added, significant congestion remains.

On April 21, 2004, Secretary Mineta stated:

...three months ago today, January 21, Administrator Blakey and I came before you to announce aggressive measures meant to help unclog the skies over Chicago and get flights back on schedule at O'Hare. We outlined an order that made official our proposals to United and American Airlines to cut their peak-hour operations by 5 percent...**O'Hare delays for March were still high, and on-time performance fell...with the summer storm season approaching and airline travel on the rise, we can only conclude that more must be done just to stay ahead of the curve...**I am announcing today that United and American Airlines will make an additional two-and-a-half percent reduction in flights operating at O'Hare during peak periods, with changes set to take effect in June. We also are expanding the order to include the Noon hour...**The majority of United's 17 flight reductions will be rescheduled during slower times of the day. Likewise, American plans to reschedule most of its 12 targeted operations. Both airlines intend to cancel a small handful of flights...Remember this -- Delays at O'Hare are felt well beyond Chicago. A problem there can impact as many as 40 airports and thousands of passengers nationwide in a matter of minutes.** That is why it is vitally important that we continue to work together to ensure that we are making the right decisions in the best interests of the traveling public, and that we do nothing to unravel the rebounding confidence that consumers have in the safety and security of air travel.

As noted by the Secretary, United and American eliminated a "small handful of flights."

During the past year, United and American have added approximately 100 total O'Hare arrivals.

United continues to add flights. The March 24 Aviation Daily states that United will add capacity from Chicago to several cities:

United this summer plans to boost capacity from Chicago O'Hare to several leisure destinations thanks to the launch of Ted service from its largest and busiest hub. Following its strategy of replacing mainline flights from its U.S.

hubs to leisure cities, the low-fare Ted service will start operating from Chicago on May 24. When fully implemented, Ted will operate five daily roundtrips to Tampa, eight to Las Vegas, seven to Orlando, six to Phoenix and four to Fort Lauderdale.

Comparing last summer's timetable with this summer's projected Ted schedule shows the 004 expansion will bring more than 2,100 more seats to the five leisure destinations. Fort Lauderdale and Phoenix will each see two additional daily roundtrip flights and Tampa and Orlando will have one more frequency than last year.

On June 10, 2004, United launched daily nonstop service between O'Hare and Osaka Kansai in Japan.

On July 20, 2004, United announced significant service expansion from O'Hare. On October 4, 2004, United will add two daily nonstop roundtrip flights from O'Hare to Albuquerque, N.M., and Tucson, Ariz., as well as one daily flight to Palm Springs, Calif. United Express carrier SkyWest also will add regional jet service from O'Hare to Edmonton, Canada, with two daily nonstop flights. On December 16, 2004, United will increase service to Aruba with one daily roundtrip, replacing the Saturday-only service.

On July 27, 2004, United launched nonstop Chicago-Maui-Kona service and on July 29, 2004, United announced Chicago-Shanghai service.

During the August 4 meeting, FAA officials announced that the goal for O'Hare is to limit arrivals to 86 per hour. As previously noted, United and American operate most of those operations. A smaller carrier might have one arrival in any hour. A limited incumbent at O'Hare may operate a total of 8 arrivals or less during the entire period. If a small carrier wants to operate at O'Hare, it should not be forced to reduce 10% to 15% of its operations while the two carriers dominating the airport, United and American, have expanded operations. While all carriers want to be able to help address the delay problem, a carrier with 8 or fewer arrivals is limited in the steps it can take if it wants to be somewhat competitive. Moreover, a carrier with

that number of operations probably only has use of one gate which further limits its ability to make major changes to the timing of its flights.

During the August 4 meeting, a FAA official stated that small carriers and new entrants may be limited to 8 total O'Hare arrivals. The FAA has given no explanation as to the basis for an 8 arrival limitation other than it was once imposed. The current definition of a "high density" limited incumbent is a carrier with 10 arrivals (total of 20 slots.) An "arrival limitation" of 8 is highly arbitrary. Where is the analysis of the economic impact of such a limitation? Is a carrier with only 8 arrivals supposed to remain at that number because United and American flooded the airport with new operations and regional jets. Imagine a limited incumbent attempting to compete with United and American in a market where they can add flights but the limited incumbent cannot. By freezing smaller carriers, the FAA would make it easier for United and American to further dominate all markets. In some cases, smaller carriers have been blocked from expanding at O'Hare because United and American have controlled most of the gates and other facilities making it impossible to add flights. United and American face no such limitations.

Spirit Airlines is an example of a carrier that would be significantly impacted at O'Hare if the government, after allowing United and American to expand without limitations during the past two years, blocked Spirit from expanding. Spirit operates 7 arrivals during the controlled hours. Spirit has not been able to expand during the past two years because of facility limitations which it is working hard to solve. With those seven arrivals, Spirit serves six markets from O'Hare.

Two of the O'Hare markets that Spirit serves are Fort Lauderdale International Airport ("FLL") and Orlando International Airport ("MCO"). United and American both serve those airports. From August, 2003 to August, 2004, United increased its available seats in the FLL-

ORD market by 135.5%. In August 2003, Spirit had approximately 45% of the seat total offered by United and American in the FLL-ORD market. As a result of the growth by United and American, in August 2004, Spirit will have 30% of the seats offered by those two carriers in that market. As to aircraft use in the FLL-ORD market, United operated 62 monthly flights in August, 2003, while it will operate 124 monthly flights in August, 2004, an increase of 100%. American will increase its monthly aircraft use in FLL-ORD from 93 in August, 2003 to 97 in August, 2004. At the same time, in the FLL-ORD market, Spirit operated 62 monthly aircraft in August, 2003 and will operate an identical number of operations in August, 2004. In ORD-MCO, American will increase monthly seat capacity from 17,688 in August, 2003 to 28,819 in August, 2004. In that same period, United's monthly ORD-MCO seat capacity will increase from 28,344 to 33,054. In ORD-MCO, American's monthly flights will go from 124 to 157, while United's monthly flights will increase from 195 to 221. United and American combined have over 375 total monthly operations in the FLL-MCO market while Spirit has a total of 62 monthly operations in that market. Therefore, Spirit's two ORD competitors have added a significant amount of flight and seat capacity while Spirit has maintained its existing numbers.

Certainly, the FAA is not suggesting that Spirit will not be able to adjust and increase operations in the ORD-FLL and ORD-MCO markets and instead has no flexibility to compete against United and American both of which have added operations and can continue to add operations by shifting flights from other markets. If FAA blocks or even limits growth by Spirit it will eliminate any pretense of fair competition. The result would not only be inconsistent with governing statutes but would reward the dominant carriers for creating the problem in the first place.

V. Limited Incumbents Must Be Allowed to Expand Operations

If controls must be implemented, carriers at O'Hare with fewer than 10 arrivals during the controlled hours of 0700 through 2100⁶ should be allowed to add arrivals as long as their total operations do not exceed 10 during the controlled hours. If these overall restrictions remain in place for longer than six months, limited incumbents should be allowed to add up to two additional arrivals during the controlled hours at the end of that six month period or by June 1, 2005. A limited incumbent adding one or two arrivals by June 1, 2005 should be able to add those operations in any time period although each would take steps to limit the impact of any new operation. If the restrictions remain in place beyond that date, limited incumbents would be able to add up to three arrivals every six months during the controlled hours although FAA could revisit that issue through this public proceeding⁷. Before updating any controls at O'Hare, FAA should clearly state what has created the "congestion" problem at O'Hare. The carriers that have significantly increased operations at the airports should be identified and be the ones to adjust schedules⁸.

On March 24, 2004, at the FAA Commercial Aviation Forecast Conference, Secretary Mineta emphasized the importance of airline competition and the benefits created by low-fare carriers:

...more Americans, in turn, are returning to the skies...The real news is that we are seeing different passengers, traveling on new and different airlines, using different types of aircraft, and flying in and out of different airports. In other words, aviation today is not so much an industry in recovery, as an industry in transition...the combination of shifting demand for air travel, and the emergence of more low-fare airlines, has set the stage for major change in the airline industry...And while high-fare demand is still off, demand for low-fare service is

⁶ For example, Spirit Airlines has seven arrivals (less than 1% of United's total) during the controlled hours. It has been working on adding some new flights. It should not be blocked from taking such steps.

⁷ Considering the documented impact of regional jets on operations at O'Hare, including the DOT IG report which has not been rebutted by the FAA, and the airspace system, there would be no objection to closing the airport to increased regional jet operations. Moreover the agency should consider limiting the number of regional jet operations in certain peak times.

⁸ The charts released by the FAA demonstrate that it is United and American that have increased O'Hare operations.

strong and growing stronger. We think that the changes that are underway now are the kind of market-based, cost competition that the architects of deregulation thought would happen 25 years ago. Consumers are driving these changes - and that, ultimately, is a very healthy development. Airline customers have more options, at lower fares, based on more timely information, than ever before - and our economy is better off as a result.

The FAA should not take steps to limit “options” to airline customers. As the DOT stated in the special feature, “Future of the Airline Industry: Legacy Carrier Revenue Premiums” of the 4th Quarter 2002 Passenger and Fare Information:

While leisure travelers have always chosen an airline primarily based on price, there is growing evidence that business travelers have become significantly more price sensitive. Furthermore, in contrast to many previous cyclical downturns, business travel has substantially declined during the recent economic downturn while leisure travel has remained relatively robust by comparison...evidence suggests that business travelers are increasingly willing to fly on low-fare carriers whose growth is having a greater influence on premiums the legacy carriers can charge business passengers.

VI. Conclusion

If the FAA only addresses delays and congestion at O’Hare and does not provide for new entry and the growth of competitors, it will:

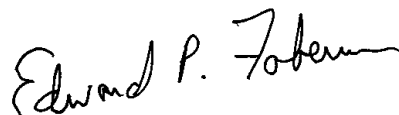
- limit competition;
- increase unreasonable industry concentration and market domination;
- discourage entry into markets by new entrants;
- increase the price of air transportation; and
- discourage travelers from utilizing the nation’s air transport system.

FAA must act in a way that not only reduces delays but does not foreclose entry and competition and does not leave flight numbers at a level that could significantly impact smaller carriers. Therefore, FAA should take the following steps:

1. Publicly state the cause of the delay problems. If it is over-scheduling, the agency should show which carriers are the largest at the airport in question and what changes they have made to their schedules to create the new problem. The agency should also show whether congestion and delay are related to regional jet operations.
2. Reduce operations at the airport to a level that allows carriers to enter the airport and that allows carriers at the airport with less than 10 arrivals in controlled hours to increase operations periodically during the next six months and as long as this limitation remains in place.
3. Establish a procedure that would allow all carriers at O'Hare to operate delay free operations regardless of whether the dominant carriers continue to add flights. Limited incumbents should be allowed to designate up to 8 daily "delay free" arrivals that would not be subject to delays unless unusual conditions exist requiring the FAA to immediately and dramatically limit traffic.

O'Hare is an airport where travelers have limited low-fare options. The FAA and DOT need to take steps to ensure that low-fare carriers can operate and expand at O'Hare. By taking these steps, the FAA will address congestion while ensuring that competition will continue.

Respectfully submitted,



Edward P. Faberman
Executive Director
Air Carrier Association of America
1500 K Street N.W., Suite 250
Washington, D.C. 20005-1714
202-639-7502
202-639-7505 FAX
epfaberman@acaal.com